

**Open Solicitation Plan  
For**

**Open Solicitation (1057579) – Level III.5 Residential Substance Abuse Treatment Program**

As required by Montgomery County Procurement Regulations, Code of Montgomery County Regulations (COMCOR), Section 11B.00.01, et seq., Section 4.1.6.3 (a), the Department of Health and Human Services (DHHS) is submitting this Open Solicitation Plan for approval by the Director, Office of Procurement, Montgomery County.

Section 4.1.6.3 Procedure These services are to be client-driven in that the selected providers will be placed on the list of current contractors for the County’s Behavioral Health Planning and Management (BHPM) unit, and clients may choose a provider based on personal preference, language capabilities and/or range of services provided.

- (1) Public Notice – Notice for this solicitation will be posted on the Montgomery County (County), Office of Procurement website.
- (2) Application Process – The DHHS, Contract Management Team (CMT) will mail out the solicitation packet for this Open Solicitation to all providers who express an interest in applying to provide the requested services. The solicitation packet includes the following: 1) the Notice to Vendors; 2) the Instructions; and 3) the pre-approved Form Contract including the General Conditions of Contract Between County and Contractor and all other attachments. Applicants will be required to sign the Application Form (Attachment F, to the pre-approved Form Contract), stating that they have received the solicitation packet and understand the requirements of this Open Solicitation.
- (3) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum qualifications (set forth in Article II., Minimum Qualifications of the Pre-Approved Contract) for services upon which applicants will be accepted. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the minimum qualifications.
- (4) All applicants meeting the minimum qualifications listed in the Pre-Approved Contract will be eligible to receive a contract to provide the services described in the Open Solicitation. The County makes no guarantee that any single contractor will receive referrals or serve clients under a contract resulting from this Open Solicitation. These services will be client-driven in that the selected providers will be placed on the list of current contractors for the County’s Behavioral Health Planning and Management (BHPM) unit, and clients may choose a provider based on personal preference, language capabilities and/or range of services provided.
- (5) Pre-Approved Form Contract – Applicants will be required to execute a contract with the County using the Pre-Approved Form Contract (the Form Contract), including the General Conditions of Contract Between County and Contractor (“General Conditions”), without modification.
- (6) Cost – The cost of contracts will not exceed available appropriations. Funds will be encumbered in purchase orders issued under the contracts by DHHS.
- (7) Cancellation – The County reserves the option to cancel this Open Solicitation at any time. Award of a contract under this Open Solicitation is subject to fiscal appropriations.

- (8) Changes to Forms - At the request of the Office of Procurement, the County may update the Open Solicitation Form contract with updated versions of the forms listed below without issuing an amendment to the Open Solicitation or to existing contracts:
- (a) General Conditions of Contract Between County & Contractor (PMMD-45);
  - (b) Minority Business program & Offeror's Representation (PMMD-90);
  - (c) Sample Montgomery County MFD Report of Payments Received (PMMD-97)
  - (d) Minority-owned Business Addendum to the General Conditions of Contract between County and Contractor (PMMD-91)
  - (e) Minority, Female, Disabled (MFD) Person Subcontractor Performance Plan. (PMMD -65)
  - (f) Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor (PMMD-177); and
  - (g) Business Associate Agreement.

The updated forms will be applicable to new contracts entered into after the date they are added to the open solicitation; forms attached to previously executed contracts will remain in effect for these contracts unless formally amended by contract amendment.

**OPEN SOLICITATION #1057579**  
**NOTICE TO VENDORS**

Montgomery County, Maryland, through its Department of Health and Human Services (“the County”), is seeking applications from experienced and qualified entities to provide a program(s) of ethnically and culturally relevant intensive substance abuse treatment services. The program(s) encompass a Level III.5 residential program for adults with significant criminal history in a facility or facilities provided by the Contractor. These programs are defined by the American Society of Addiction Medicine (The ASAM Criteria) and the County will refer clients to the Program using these criteria. Approximately ninety (90) percent of referred clients will have significant criminal justice involvement, including pending offenses and will be under a condition of release that stipulates substance abuse treatment. The remaining clients may have involvement with other public safety or social service programs, including, but not limited to, child protective services or domestic violence programs.

The purpose of an Open Solicitation under Montgomery County’s Procurement Regulations is to accept applications on a continuing basis to meet service needs. The number of clients, the amount of funding available, the number of applications received, and the capacity of individual applicants determine how long the County is able to accept applications for any particular scope of service under an Open Solicitation. The County seeks qualified applicants who are licensed and certified by the State of Maryland to provide Level III.5 Residential Substance Abuse Treatment Services.

A complete description of the Scope of Services required is listed in the Open Solicitation application packet. You may obtain a packet by contacting the Contract Management Team at 240-777-1562 and requesting Open Solicitation number 1057579, providing your contact name and **complete** e-mail address, and your telephone number.

The rates for the services under Open Solicitation #1057579, are set by the County and published at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. The current County rates will be provided to potential vendors upon request of an Open Solicitation application packet.

The County will enter into a contract with all applicants who meet the minimum qualifications as described in the Form Contract (Article II., Minimum Qualifications) and are found to be a responsible organization. The County will sign the contract and return a copy to the applicant. The Form Contract with all Attachments will constitute the entire Contract. The applicant must sign the County’s Form Contract which includes the General Conditions of Contract Between County and Contractor, and other Attachments, as written with no modification.

Questions related to the technical information in this Open Solicitation should be directed to Tracey Bailey, Program Manager, Behavioral Health and Crisis Services, at 240-773-1132.

Questions related to the application/contract process and insurance requirements may be directed to Dandria Clark, Senior Contract Manager, at 240-777-1251.

# OPEN SOLICITATION #1057579

## INSTRUCTIONS TO VENDORS

### I. **Submission Documents:** The following items must be submitted:

#### A. **Form Contract** – Attachments of the form contract must be filled out correctly and submitted.

Please follow these steps:

1. Sign the Form Contract – If the applicant is a corporation, an officer of the corporation with authority to sign contracts for the corporation must sign the Form Contract.
2. PLEASE DO NOT PUT A DATE IN THE PARAGRAPH AT THE TOP OF THE SIGNATURE PAGE. ENTER A DATE ONLY IN THE SIGNATURE BLOCK.
3. Submit all the pages of the Form Contract (not just the signature page), including the completed attachments listed below:
  - a. General Conditions of Contract Between County & Contractor, (Attachment A);
  - b. Business Associate Agreement, (Attachment B);
  - c. \*Optional\* Attachment C, “Minority Business Program & Offeror’s Representation” – this form may be filled out and submitted if applicable to the applicant’s organization;
  - d. Attachment D, “Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor,” and “Minority, Female, Disabled Person Subcontractor Performance Plan” (“MFD” Plan) – Please submit your MFD plan or request a waiver;
  - e. Attachment E, “Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor”;
  - f. Attachment F, “Application Form”, Please complete the Application Form in its entirety. Applicants must check off profit or non-profit designation and designate which services they will be providing; and,
  - g. Attachment G, “References”, Please provide 3 references with your proposal;
  - h. Proof of Good Standing with the State of Maryland Department of Assessments and Taxation Business Services (<http://sdat.resiusa.org/ucc-charter/default.aspx>)- if applicable.

#### B. **Narrative** – A description of your organization’s area of specialty, knowledge of and experience with provision of Level III.5 residential substance abuse treatment. This information must be provided in no more than eight double-spaced typewritten pages, using Times New Roman 12 point font.

#### C. **Resume** – If applying as an individual, please provide a copy of your up-to-date resume. If an agency or organization is applying, please provide a copy of an up-to-date resume for each person who would provide residential substance abuse treatment services under the Contract resulting from this Open Solicitation.

#### D. **Certificate(s) of Insurance** – This provides evidence of meeting the insurance requirements set forth in Article VIII. of the Pre-Approved Form Contract. Contact your insurance broker to

**OPEN SOLICITATION #1057579**

obtain the Certificate.

- E. Licenses If an agency or organization is applying, please provide a copy of an up-to-date license for each person who would provide services under the Contract resulting from this Open Solicitation. The Contractor must abide by all Program requirements for staffing set forth in COMAR§10.47.01.06.
- F. Financial Information – Please provide a copy of your agency’s most recent audited financial statement. In the case of a sole proprietor, an applicant can submit the prior year’s tax return. All applicants must submit additional data as requested by the County to help determine financial responsibility and resolve any questions concerning their financial soundness.
- G. Proof of legal name – Please provide the articles of incorporation and articles of amendment if applicable.
- H. Proof of Good Standing with the State of Maryland Department of Taxation and Assessment.
- I. Proof of tax – Please provide a W-9 Tax form or a copy of Social Security card if an individual or Sole Proprietorship is applying under this Open.
- J. Proof of tax-exempt status – Please provide a determination letter from the IRS if applicable
- K. References – Please provide three (3) references including name, address, and phone number which highlight accomplishments for provision residential substance abuse treatment services.
- L. Please provide complete addresses of all locations where services will be provided and the telephone number(s) for each site. If additional room is needed, please submit this information on additional sheets.

Address:

Telephone Number(s):

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Address:

Telephone Number(s):

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**OPEN SOLICITATION #1057579**

Address:

Telephone Number(s):

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- M. Provide proof that your facility or facilities meet the requirements of the federal Americans with Disabilities Act (ADA).
- N. Provide proof that program site(s) is accessible via public transportation so that clients can return to Montgomery County, if the site is outside of Montgomery County, and have reasonable visitation from eligible family members.
- O. Provide evidence of the applicant's intervention strategies that have been demonstrated to be effective with the target populations and are based on an abstinence orientation.
- P. Applicants must be certified either by: 1) State of Maryland's Office of Health Care Quality (OHCQ), 2) Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or 3) the Commission on Accreditation of Rehabilitation Facilities (CARF) to provide the designated level of care, e.g., Level III.5, for its alcohol and drug treatment program. The County will also consider applications from providers who have applied for pre-certification review prior to provision of direct services. Please mark with an "X" in the appropriate blanks below to show the Applicant's current status and submit any relevant paperwork, such as a copy of the Applicant's certification, to support this:

\_\_\_ is currently certified by the Maryland OHCQ;

OR

\_\_\_ if another state/local certification applies, and what it is: \_\_\_\_\_

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OR

\_\_\_ if the Applicant is certified by JCAHO

OR

\_\_\_ if the Applicant is not currently certified as a Level III.5, whether you have started the pre-certification process and when you expect to receive certification.

## OPEN SOLICITATION #1057579

- Q. Provide proof that the Applicant has the capability to utilize Value Options or its successor Administrative Services Organization (ASO) to automate transmission of client records, receive urinalysis lab reports from the Montgomery County laboratory (as applicable), and jointly execute the graduated sanctions program for adults and criminal offenders on probation or diverted from court with the Division of Parole and Probation.
- R. Provide proof that the Applicant has the ability and capacity to provide a 24 hour coverage mechanism to ensure that each client's primary counselor, or another counselor assigned by the applicant, is available to respond to clients when a client is in crisis, as determined by the client, and that the counselor has access to the client's case records.
- S. Provide a plan to achieve retention of up to 70 percent of clients admitted for a minimum of 120 days.
- T. Provide proof that the Applicant has the ability and capacity to bill and collect third party insurance; agency is panel provider for at least two (2) Managed Care Organizations (MCOs) or Health Maintenance Organizations (HMOs) [or] Behavioral Health Organization (BHO) or ability to access reimbursement for eligible clients with co-occurring mental health disorders through Public Mental Health System (PMHS).
- U. Provide a list naming Program Director, Executive Director, and Senior Clinical Staff who will be providing services under this Contract and their qualifications.

### II. Instructions:

- A. As directed above in Section I., please complete, attach, and send all Submission Documents to:  
Montgomery County Government  
Tracey Bailey, Program Manager, Behavioral Health and Crisis Services  
401 Hungerford Drive, 1st Floor  
Rockville, Maryland 20850
- B. If your application meets the Minimum Qualifications stated in the Pre-Approved Form Contract and your organization is found to be responsible, your application will be accepted and approved and the County will execute the contract and return a copy to you. Once you receive notice from the County that the contract has been executed, an executed purchase order from the County, a request for services from the County and have completed and passed the criminal and Child Protective Services (CPS) background check, you may begin to provide services to clients.
- C. A copy of the County's General Conditions of Contract Between County and Contractor ("General Conditions") is included with the solicitation packet. The County's General Conditions will be attached as Attachment A to any contract that results from this Open Solicitation and includes terms and conditions that the County requires of Contractors.

# OPEN SOLICITATION #1057579

Form Contract # \_\_\_\_\_

## Level III.5 Residential Substance Abuse Treatment Program

### BACKGROUND/INTENT

1. The County requires a Level III.5 American Society of Addiction Medicine (ASAM) residential substance abuse treatment program for adult criminal offenders referred for services by the County. The County requires these services as part of a larger continuum of substance abuse treatment available to qualified Montgomery County residents. The average length of stay for successful clients is anticipated to be six (4) months, although a variable length of stay for a continuum of service may reach twelve (6) months.
2. The required services may include individual therapy, group therapy, psychiatric evaluation and ongoing treatment, medication management, specialized treatments, consultation and assessment and evaluation services.
3. Clients will be referred to the Program for services through various agencies within the Department of Health and Human Services, Behavioral Health and Crisis Services.

### TERMS AND CONDITIONS

#### I. SCOPE OF SERVICES

- A. The Contractor must provide a Level III.5 Residential Substance Abuse Treatment Program, as defined by the ASAM. The Contractor's program must:
  1. utilize intervention strategies that have been demonstrated to be effective in reducing criminal attitude and behaviors associated with this population, and are based upon an abstinence orientation (as defined in ASAM );
  2. be available to clients and their family members who are referred by the County; and
  3. be certified by State of Maryland's Office of Health Care Quality (OHCQ), Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or the Commission on Accreditation of Rehabilitation Facilities (CARF) to provide the designated level of care for the alcohol and drug treatment program it has applied to provide OR the Contractor must have applied for pre-certification review prior to the provision of direct services under this Contract.
- B. The Contractor must provide its program of services in a facility that is approved by the County and readily accessible to public transportation and must meet the requirements of the federal Americans with Disabilities Act (ADA). The Contractor is not limited to providing the intensive phase of its treatment program in Montgomery County, however, the Contractor's program site must be accessible by public transportation so that clients

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

can return to Montgomery County and have reasonable visitation from eligible family members.

- C. The Contractor must develop, implement, and maintain a written individual treatment plan (ITP) for each client based upon the Contractor's assessment and evaluation of the client's needs and upon information about the client provided to the Contractor by the County, or an agency approved by the County. The client's ITP must include individual, group, and/or family counseling and addiction education services that are based upon an abstinence orientation and disease concept of substance abuse (as defined in ASAM) that are known to be effective in reducing use of alcohol and other drugs and reducing criminal attitudes and behaviors.
  
- D. The Contractor must provide the following minimum levels of service to the clients referred by the County unless an alternative plan is approved in writing by the County for an individual client:
  - 1. a preliminary medical assessment within 36 hours of the client's admission;
  - 2. a physical examination by a medical doctor, physician assistant, or nurse practitioner within the first week of the client's admission;
  - 3. an assessment as described in COMAR 10.47.01.04 within 2 days of admission;
  - 4. ITP as described in COMAR 10.47.01.04 completed and signed by the alcohol and drug counselor and client within 2 working days of the comprehensive assessment with a treatment plan update every 30 days;
  - 5. monitoring of medication, as necessary; and
  - 6. a minimum of 36 hours of therapeutic activities a week, including but not limited to:
    - a. at least weekly individual counseling;
    - b. group counseling;
    - c. alcohol and drug education;
    - d. career counseling;
    - e. nutrition counseling; and
    - f. family services.
  
- E. The Contractor must offer a minimum of six (6) one and a half hour substance abuse education seminars for the client's family members, approved by the County to each client and his or her participating family members during the course of treatment. This requirement is to be completed prior to the Re-entry Phase of the service continuum (before day 150), and is in addition to all other requirements in this Contract. Clients may receive a waiver from this requirement if they have demonstrated a significant hardship or impairment that prevents family members from participation. The Contractor's waiver of this requirement for any client must be approved by the County.

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

- F. Regardless of the Contractor's service location, urinalysis must occur at least twice per week during the initial and transitional phases of treatment for persons who have unsupervised time in the community. Urinalysis schedules may be adjusted as determined by the client's ITP and with approval from the County. Any Contractor who provides services under this Contract must utilize the County's Contracted provider for laboratory services and provide referrals for Urine Monitoring Program (UMP) collection services via Value Options or its successor ASO. The County will provide staff training on making referrals and accessing UMP results. Clients will be responsible for making payment, on a sliding scale fee schedule, for laboratory services. A waiver may be requested and must be approved by the County to use laboratory services other than the County's contracted provider.
- G. The Contractor must coordinate the provision of service to each client with other agencies to whom the County or Contractor refers the client, or with other agencies providing services to the client and/or the family. The Contractor must execute formal agreements with these other service providers which must be in accordance with federal, state and local regulations on confidentiality and patient privacy.
- H. The Contractor must maintain a written service policy and procedures for the level of service (per ASAM) provided under this Contract. Within 30 days of contract execution, the Contractor must submit its service policy and procedures for the substance abuse treatment program provided under this Contract to the County for review and approval. The Contractor must maintain documentation verifying that each administrative and clinical staff member of the program has reviewed a copy of the service policy and procedure within three (3) weeks of employment. The service policy and procedure must include:
1. the objectives of the program to be attained by the provision of counseling services to a substance abusing adult and his or her family;
  2. the criteria used to measure clients' progress toward the attainment of the program objectives; and,
  3. a description and justification of the counseling modalities utilized by the program within an abstinence orientation and disease concept of substance abuse.
- I. The Contractor must develop and implement a written policy and procedure for clients approved by the County that describes its organization and includes:
1. a policy and procedure to coordinate the provision of services with the County; and,
  2. an organizational chart showing the relationship between and the function of all program staff and administrators.
- J. The Contractor must provide annual documentation to the County that the program's governing authority, Executive Director, clinical staff, and administrative staff have updated and reviewed the program's policies and procedures for service and organization referenced in Article I, Paragraph I.1-2.

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

- K. The Contractor must develop and implement a written policy and procedure approved by the County for the admission of clients into the program.
- L. The Contractor must provide a 24-hour coverage mechanism, approved by the County, to ensure that each client's primary counselor, or another counselor assigned by the Contractor, is available to respond to a client when a client is in crisis as determined by the client, and that the counselor has access to the client's case records.
- M. The Contractor must provide a program of education sessions for County-referred clients that incorporates the chronic disease model of addiction for a minimum of nine (9) cumulative hours in addition to providing an intensive counseling program of not more than twenty-six (26) weeks that includes content that has been empirically demonstrated to be effective in the treatment of substance abuse and criminogenic factors. The Contractor must submit a sample treatment week and curriculum guide to the County that includes content for each group session for both the education (9 hours) and on-going maximum of 26 week phases of treatment for approval within 90 days of Contract execution.
- N. The Contractor must obtain the approval of the County prior to the discharge of a client from the program for noncompliance with the client's ITP. The Contractor must document and justify the reason for a client's discharge from the program in the client's written record.
- O. Within sixty (60) days of execution of this Contract, the Contractor must develop a policy and procedure approved by the County for the transfer or disposition of the Contractor's caseload of clients referred under this Contract upon termination of the Contract. The Contractor must implement the policy and procedure for caseload transfer or disposition upon written notice from the County. The Contractor's caseload transfer or disposition policy must address:
1. the time period for the completion of the transfer or disposition of the Contractor's caseload;
  2. the Contractor's plan to assure that adequate client services are continued; and,
  3. the County's right to review the need of each of the Contractor's County referred clients for continuing care and financial assistance.
- P. The Contractor must provide an intake process and a sufficient number of counseling staff fluent in Spanish to offer this intensive substance abuse treatment program in Spanish, including the ability to read and write in this language, for Spanish speaking clients.
- Q. The Contractor must provide the agreed upon level of intensive substance abuse treatment services to all County-referred clients, regardless of a client's ability to pay for

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

services. No client or family member may be refused such services because of his or her inability to pay.

- R. The Contractor must not charge a fee to any client for the initial or intake appointment required to complete the Addiction Severity Index and ITP.
- S. The Contractor must use Value Options or its successor ASO to automate transmission of client records, receive urinalysis lab reports from the Montgomery County laboratory (as applicable), and jointly execute the graduated sanctions program for adults and criminal offenders on probation or diverted from court with the Division of Parole and Probation.
- T. The Contractor must provide evidence of a system of written and electronic records approved by the County prior to the provision of services under this Contract which must comply with the State of Maryland's OHCQ standards (COMAR 10.47.01.08). The Contractor must make available to the County all client records, including specific medical information contained therein, upon request of the County.
- U. The Contractor must maintain caseload statistics via Value Options or its successor ASO and provide monthly performance data in a format to be provided by the County.
- V. The Contractor must submit a plan for implementing a client satisfaction survey, subject to County approval, as part of an overall plan for Continuous Quality Improvement within 90 days of Contract execution.
- W. The Contractor must abide by applicable ethical and legal standards for protection of patient health information under HIPAA, and other laws and regulations governing the privacy of medical records and substance abuse treatment records. The Contractor must complete, sign and agree to adhere to the provisions stated in the Business Associate Agreement attached to this Contract. (See Attachment B to this Contract.) The Contractor must maintain all or portions of records in Value Options or its successor ASO.
- X. Applicants must maintain caseload statistics via Value Options or its successor ASO and provide monthly performance data in a format to be approved by the County.
- Y. For clients who have a co-occurring mental health disorder, the applicant must be able to access reimbursement for those clients' mental health treatment through the client's medical insurance.

**II. STAFFING AND LICENSURE REQUIREMENTS/MINIMUM QUALIFICATIONS**

The Contractor and all staff must meet the minimum requirements listed below to provide services to clients under this Contract. The Contractor must comply with these "Staffing and Licensure Requirements" for the duration of the contract term.

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

- A. Ability and capacity to provide a Level III.5 ASAM Residential Program. These services are needed for adult criminal offenders with significant criminal justice involvement, including pending offenses and who are under a condition of release that stipulates substance abuse treatment, or adults who may have involvement with other public safety or social service programs, including, but not limited to, child protective services or domestic violence programs for adult criminal offenders. All clients will be referred for services by HHS, Behavioral Health and Crisis Services.
- B. The Contractor must provide services in a facility or facilities that meet the federal ADA requirements.
- C. The Contractor is not limited to providing the intensive phase of treatment within the geographic limits of Montgomery County, Maryland; however, any program site used by the Contractor must be accessible via public transportation so that clients can return to Montgomery County and have reasonable visitation from eligible family members. The Contractor will not receive preference for proposing to provide services at more than one site.
- D. The Contractor must utilize intervention strategies that have been demonstrated to be effective in reducing criminal attitude and behaviors associated with this population, and must be based upon an abstinence orientation.
- E. The Contractor must be certified by OHCQ, JCAHO, or CARF to provide the designated level of care, e.g., Level III.5 for its alcohol and drug treatment program or the Contractor must have applied for pre-certification review prior to the provision of direct services under a Contract issued under Open Solicitation # 1057579, Level III.5 Residential Substance Abuse Treatment Program.
- F. The Contractor must use Value Options for all data collection and reporting requirements for clients on admission and discharge for treatment services they deliver. The Contractor must use this system or its successor ASO to automate client records, receive urinalysis lab reports from the Montgomery County laboratory (as applicable), and jointly execute the graduated sanctions program for adults and criminal offenders on probation or diverted from court with the Division of Parole and Probation.
- G. The Contractor must have the ability and capacity to provide a 24 hour coverage mechanism to ensure that each client's primary counselor or another counselor assigned to the client, is available to respond to clients when they are in a crisis situation as determined by the client, and that the counselor has access to the client's case records.
- H. The Contractor must submit and maintain a plan to achieve retention of up to seventy (70) percent of clients admitted for a minimum of one hundred twenty (120) days.

## OPEN SOLICITATION #1057579

Form Contract # \_\_\_\_\_

### Level III.5 Residential Substance Abuse Treatment Program

- I. The Contractor must be a panel provider for at least two (2) Managed Care Organizations (MCOs), Health Maintenance Organizations (HMOs), [or] Behavioral Health Organizations (BHOs).
- J. The Contractor must have a minimum of five years licensure and experience for the level of care described in this Contract with the population to be served under Open Solicitation, #1057579, Level III.5 Residential Substance Abuse Treatment Program as well as the appropriate staff with commensurate experience in providing the required services under this Contract.
- K. All professional staff who provide counseling services to clients under this Contract must be licensed or certified to practice in Maryland or have licensure in the jurisdiction in which they operate under the appropriate Title of the Health Occupations Article (or local equivalent) as required by Code of Maryland Regulation (COMAR) 10.58.01 9 (or local equivalent). If the Contractor is located outside of Maryland, the Contractor must meet the certification requirements of the state in which it provides services. All providers must meet the caseload standards as set by COMAR.
- L. The Contractor must ensure that all staff vacancies will be filled promptly. If an unfilled vacancy is impacting service provision, the Contractor must provide documentation to the Contract Monitor of all efforts to hire staff so that services are provided in a timely and efficient manner.
- M. The Contractor must submit copies of all resumes, licenses, credentials, approval and degrees for all new personnel who perform work under this Contract within 15 days of hire, and provide a copy of professional licenses yearly or as renewed for the purposes of audits.

### III. FEE COLLECTIONS AND REPORTING

- A. The Contractor must establish and maintain a schedule of fees and a method of charging and collecting fees from clients which are subject to County approval. The Contractor must charge and collect fees from clients or third-party payors for services that are billable mental health or substance abuse counseling services. The Contractor must bill the applicable MCO, HMO, BHO, or PMHS for services that are eligible for reimbursement on behalf of each client.
- B. The Contractor must retain all fees collected from or on behalf of clients. The Contractor must credit fees to the County against the invoice in the month that the fees are received. Any fees that the Contractor collects which are received after the close of the County's fiscal year (July 1<sup>st</sup> - June 30<sup>th</sup>) for services provided during the County's fiscal year, must be credited and reconciled to the fiscal year in which services were provided. The Contractor must provide this information in a report to the County within 60 days of the end of the County's fiscal year.

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

- C. The Contractor must ensure that clients, who are eligible for billable mental health or substance abuse services, are registered as service recipients with the PMHS, and that invoices for billable services are submitted in a timely manner for collection of payments from this entity, and every reasonable effort is made to collect those payments.
- D. The Contractor must submit to the County a monthly client fee report delineating fees collected from clients, billings made to third party payors and payments collected from those payors.
- E. The County is not responsible for the Contractor's failure to collect payments from clients or third-party payors.

**IV. COMPENSATION**

- A. The County will compensate the Contractor for services rendered at a pre-determined rate listed at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. This rate is inclusive of items listed in I.D. under Scope of Services. This rate applies to all services provided to the County by the Contractor in the course of providing Level III.5 Residential Substance Abuse Treatment program services.
- B. No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and Notice(s) to Proceed and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount.
- C. Compensation must not exceed funds appropriated by the County and encumbered into the County Purchase Order issued to the Contractor.
- D. No minimum number of hours of service is guaranteed to any Contractor under this Contract.

**V. INVOICES**

The Contractor must submit monthly invoices and supporting documentation in a format approved by the County no later than the fifteenth day following the end of each month. Upon receipt, acceptance and approval of the Contractor's invoice, the County will make payment, net 30 days, at the rates set forth in Article IV, Compensation, above. All required reports and other supporting documentation must be provided with the Contractor's monthly invoice. Invoices must be sent to the Program Monitor designated by the County.

**VI. TERM**

This Contract shall become effective on the date indicated on the Signature Page (Page 12) of this Contract, by the County's Director, Office of Procurement, and shall be for a two-year term. Before the Contract term ends, the Director may, (but is not required to) renew

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

this Contract for an additional term, if the Director determines that renewal is in the best interest of the County. The Contractor’s satisfactory performance does not guarantee renewal of this Contract. The Director may exercise this option to renew two (2) times for up to two (2) years each. Substantial non-compliance or substantial non-satisfactory performance, as determined in the sole discretion of the County, may lead to a work improvement plan or early termination of the Contract.

**VII. GENERAL CONDITIONS AND INSURANCE**

The General Conditions of Contract Between Contractor and County ("General Conditions") are incorporated by reference and made part of this Contract as Attachment A. The following insurance requirements supersede those outlined in Provision 21 of the General Conditions:

Prior to the execution of the contract by the County, the Contractor must obtain, at their own cost and expense, the *minimum* following insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the Contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as a limitation of any potential liability on the part of the Contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of Contractor’s obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary. Subject to applicable law, the insurance companies providing insurance coverage, as referenced in this agreement, may not limit coverage to their insured, or the County as an additional insured, to stated minimum amount(s) of insurance referenced in this contract/agreement.

Commercial General Liability – Occurrence Form

A minimum limit of liability of ***one million dollars (\$ 1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate***, for bodily injury and property damage coverage and broad form contractual liability and XCU coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

<b><i>Each Claim</i></b>	<b><i>\$1,000,000</i></b>
<b><i>Annual Aggregate</i></b>	<b><i>\$1,000,000</i></b>

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of one (1) year beginning at the time work under this Contract is completed.

Automobile Liability Coverage

A minimum limit of liability of **one million dollars (\$ 1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract. The Additional Insured endorsements shall have no added exclusions or limitations of coverage to limits of liability contractually required; or percentage of negligence attributed to the named insured. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the insurance coverage specified.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, Maryland  
HHS / CMT / Dandria Clark  
401 Hungerford Drive, 6<sup>th</sup> fl  
Rockville, Maryland 20850

**VIII. PRIORITY OF DOCUMENTS**

The following documents are incorporated by reference and made a part of this Contract and are listed in the following order of precedence to be applied in the event of a conflict in their terms:

- A. This Contract Document;
- B. The General Conditions of Contract Between County and Contractor (Attachment A);

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

- C. Business Associate Agreement (Attachment B);
- D. Minority Business Program & Offeror's Representation (Attachment C.);
- E. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor and Minority, Female Disabled Person Subcontractor Performance Plan (Collectively, Attachment D);
- F. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor (Attachment E); and,
- G. Application Form (Attachment F);

**OPEN SOLICITATION #1057579**

Form Contract # \_\_\_\_\_

**Level III.5 Residential Substance Abuse Treatment Program**

Signature Page – Open Solicitation #1057579

This Contract, which incorporates by reference: the Instructions to Vendors, the completed Application Form, the Notice to Vendors, the Approved Form Contract with applicable Attachments A, B, C, D, E, and F, copies of which have been provided to the Contractor, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (the "Contractor") and Montgomery County, Maryland (the "County"). This Contract will become effective on \_\_\_\_\_ by signature of the Director, Office of Procurement. This Contract and any renewals or extensions of this Contract are subject to the appropriation of funds.

**SIGNATURE PAGE**

*Part A: Contractor's Offer to Provide Services:*

(Prospective Contractor Must Complete)

Contracting Corporation, Partnership, Limited Liability Company OR Proprietorship

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*Part B: County Acceptance:*

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_  
Cherri Branson, Director  
Office of Procurement

\_\_\_\_\_  
Signature Date

**RECOMMENDATION**

\_\_\_\_\_  
Uma S. Ahluwalia, Director  
Department of Health and Human Services

\_\_\_\_\_  
Date

This form has been approved as to form and legality by the Office of the County Attorney.

**\* Must be signed by corporate officer or person legally authorized to bind organization to a contract**

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq., and 47 U.S.C., ch. 5.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Md. State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section.

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages.

The contractor agrees to comply with the requirements of the Displaced Service Workers Protection Act, which appears in County Code, Chapter 27, Human Rights and Civil Liberties, Article X, Displaced Service Workers Protection Act, §§ 27-64 through 27-66.

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor must not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by the Director, Office of Procurement, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

#### 7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

#### 8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

#### 9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

#### 10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

#### 11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

#### 12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b).
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

#### 13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

#### 14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply

with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

**15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE**

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

**16. IMMIGRATION REFORM AND CONTROL ACT**

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

**17. INCONSISTENT PROVISIONS**

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

**18. INDEMNIFICATION**

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

**19. INDEPENDENT CONTRACTOR**

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

**20. INSPECTIONS**

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

**21. INSURANCE**

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

TABLE A. - INSURANCE REQUIREMENTS  
(See Paragraph #21 Under the General Conditions of Contract  
Between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by				
Accident (each)	100	100	100	See
Disease (policy limits)	500	500	500	Attachment
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	Attachment
Property Damage				
each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder  
Montgomery County Maryland (Contract #)  
Office of Procurement  
Rockville Center  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850-4166

\*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS  
 (See Paragraph #21 Under the General Conditions of Contract  
 Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder  
 Montgomery County Maryland (Contract #)  
 Office of Procurement  
 Rockville Center  
 255 Rockville Pike, Suite 180  
 Rockville, Maryland 20850-4166

**(Remainder of Page Intentionally Left Blank)**

**22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT**

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

**23. NON-CONVICTION OF BRIBERY**

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

**24. NON-DISCRIMINATION IN EMPLOYMENT**

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

**25. PAYMENTS**

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account ("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

**26. PERSONAL PROPERTY**

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

**27. PROTECTION OF PERSONAL INFORMATION BY GOVERNMENT AGENCIES**

In any contract under which Contractor is to perform services and the County may disclose to Contractor personal information about an individual, as defined by State law, Contractor must implement and maintain reasonable security procedures and practices that: (a) are appropriate to the nature of the personal information disclosed to the Contractor; and (b) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Contractor's requirement to implement and maintain reasonable security practices and procedures must include requiring any third-party to whom it discloses personal information that was originally disclosed to Contractor by the County to also implement and maintain reasonable security practices and procedures related to protecting the personal information. Contractor must notify the County of a breach of the security of a system if the unauthorized acquisition of an individual's personal information has occurred or is reasonably likely to occur, and also must share with the County all information related to the breach. Contractor must provide the above notification to the County as soon as reasonably practicable after Contractor discovers or is notified of the breach of the security of a system. Md. Code Ann., State Gov't. § 10-1301 through 10-1308 (2013).

**28. TERMINATION FOR DEFAULT**

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

**29. TERMINATION FOR CONVENIENCE**

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable PMMD-45. REVISED 06/02/2015

costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

30. TIME

Time is of the essence.

31. WORK UNDER THE CONTRACT

Contractor must not commence work under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

32. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

**THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.**

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between Montgomery County, Maryland (hereinafter referred to as “Covered Entity”), and \_\_\_\_\_ (hereinafter referred to as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

### I. GENERAL

A. Covered Entity has a business relationship with Business Associate that is memorialized in Montgomery County Contract # \_\_\_\_\_ (the “Underlying Agreement”), pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996, including all pertinent regulations (45 CFR Parts 160 and 164), issued by the U.S. Department of Health and Human Services, including Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as codified in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and including any and all applicable Privacy, Security, Enforcement, or Notice (Breach Notification) Rules or requirements (collectively, “HIPAA”), as all are amended from time to time; and

B. The performance of the Underlying Agreement may involve the creation, exchange, or maintenance of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

C. For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA; and

D. This Agreement articulates the obligations of the Parties as to use and disclosure of PHI. It does not affect Business Associate’s obligations to comply with the the Maryland Confidentiality of Medical Records Act (Md. Code Ann., Health-General I §§4-301 *et seq.*) (“MCMRA”) or other applicable law with respect to any information the County may disclose to Business Associate as part of Business Associate’s performance of the Underlying Agreement; and

E. This Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof; and

F. The above premises having been considered and incorporated by reference into the sections below, the Parties, intending to be legally bound, agree as follows:

### II. DEFINITIONS.

- A. The terms used in this Agreement have the same meaning as the definitions of those terms in HIPAA. In the absence of a definition in HIPAA, the terms have their commonly understood meaning.
- B. Consistent with HIPAA, and for ease of reference, the Parties expressly note the definitions of the following terms:
  1. “Breach” is defined at 45 CFR § 164.402.
  2. “Business Associate” is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean [Insert Name of Business Associate].

3. “Covered Entity” is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean the County.
4. “Designated Record Set” is defined at 45 CFR §164.501.
5. “Individual” is defined at 45 CFR §§ 160.103, 164.501 and 164.502(g), and includes a person who qualifies as a personal representative.
6. “Protected Health Information” or “PHI” is defined at 45 CFR § 160.103.
7. “Required By Law” is defined at 45 CFR § 164.103.
8. “Secretary” means the Secretary of the U.S. Department of Health and Human Services or designee.
9. “Security Incident” is defined at 45 CFR § 164.304.
10. “Unsecured Protected Health Information” or “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology, as specified by the Secretary in the guidance as noted under the HITECH Act, section 13402(h)(1) and (2) of Public Law 111-5, codified at 42 U.S.C. § 17932(h)(1) and (2), and as specified by the Secretary in 45 CFR 164.402.

### **III. PERMISSIBLE USE AND DISCLOSURE OF PHI**

A. Except as otherwise limited in this Agreement, or by privilege, protection, or confidentiality under HIPAA, MCMRA, or other applicable law, Business Associate may use or disclose (including permitting acquisition or access to) PHI to perform applicable functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement. Moreover, the provisions of HIPAA are expressly incorporated by reference into, and made a part of, this Agreement.

B. Business Associate may use or disclose (including permitting acquisition or access to) PHI only as permitted or required by this Agreement or as Required By Law.

C. Business Associate is directly responsible for full compliance with the relevant requirements of HIPAA.

D. Business Associate must not use or disclose (including permitting acquisition or access to) PHI other than as permitted or required by this Agreement or HIPAA, and must use or disclose PHI only in a manner consistent with HIPAA. As part of this, Business Associate must use appropriate safeguards to prevent use or disclosure of PHI that is not permitted by this Agreement or HIPAA. Furthermore, Business Associate must take reasonable precautions to protect PHI from loss, misuse, and unauthorized access, disclosure, alteration, and destruction.

E. Business Associate must implement and comply with administrative, physical, and technical safeguards governing the PHI, in a manner consistent with HIPAA, that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

F. Business Associate must immediately notify Covered Entity, in a manner consistent with HIPAA, of: (i) any use or disclosure of PHI not provided for by this Agreement, including a Breach of PHI of which it knows or by exercise of reasonable diligence would have known, as required at 45 CFR §164.410; and, (ii) any Security Incident of which it becomes aware as required at 45 CFR §164.314(a)(2)(i)(C). Business Associate's notification to Covered Entity required by HIPAA and this Section III.F must:

1. Be made to Covered Entity without unreasonable delay and in no case later than 14 calendar days after Business Associate: a) knows, or by exercising reasonable diligence would have known, of a Breach, b) becomes aware of a Security Incident, or c) becomes aware of any use or disclosure of PHI not provided for by this Agreement;

2. Include the names and addresses of the Individual(s) whose PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement. In addition, Business Associate must provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

3. Be in substantially the same form as Exhibit A hereto;

4. Include a brief description of what happened, including the date of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, if known, and the date of the discovery of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

5. Include a description of the type(s) of Unsecured PHI that was involved in the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);

6. Identify the nature and extent of the PHI involved, including the type(s) of identifiers and the likelihood of re identification;

7. If known, identify the unauthorized person who used or accessed the PHI or to whom the disclosure was made;

8. Articulate any steps the affected Individual(s) should take to protect him or herself from potential harm resulting from the Breach, Security Incident, or use or disclosure of PHI not permitted by this Agreement;

9. State whether the PHI was actually acquired or viewed;

10. Provide a brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, to mitigate losses, and to protect against any further Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

11. Note contact information and procedures for an Individual(s) to ask questions or learn additional information, which must include a toll-free telephone number of Business Associate, along with an e-mail address, Web site, or postal address;

and

12. Include a draft letter for the Covered Entity to utilize, in the event Covered Entity elects, in its sole discretion, to notify the Individual(s) that his or her PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement that includes the information noted in Section III.F.4 – III.F.11 above.

G. Business Associate must, and is expected to, directly and independently fulfill all notification requirements under HIPAA.

H. In the event of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, Business Associate must mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

I. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any agent, subcontractor, or employee to whom it provides PHI (received from, or created or received by, Business Associate on behalf of Covered Entity) agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

J. Business Associate must ensure that any contract or other arrangement with a subcontractor meets the requirements of paragraphs 45 CFR §164.314(a)(2)(i) and (a)(2)(ii) required by 45 CFR § 164.308(b)(3) between a Business Associate and a subcontractor, in the same manner as such requirements apply to contracts or other arrangements between a Covered Entity and Business Associate.

K. Pursuant to 45 CFR § 164.502(a)(4)(ii), Business Associate must disclose PHI to the Covered Entity, Individual, or Individual's designee, as necessary to satisfy a Covered Entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of PHI.

L. To the extent applicable, Business Associate must provide access to PHI in a Designated Record Set at reasonable times, at the request of Covered Entity or as directed by Covered Entity, to an Individual specified by Covered Entity in order to meet the requirements under 45 CFR § 164.524.

M. A Business Associate that is a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, must not use or disclose PHI that is genetic information for underwriting purposes, in accordance with the provisions of 45 CFR 164.502.

N. To the extent applicable, Business Associate must make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR § 164.526, at the request of Covered Entity or an Individual.

O. Business Associate must, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

P. Business Associate must, upon request and with reasonable notice, furnish to Covered Entity security and privacy audit results, risk analyses, security and privacy policies and procedures, details of previous Breaches and Security Incidents, and documentation of controls.

Q. Business Associate must also maintain records indicating who has accessed PHI about an Individual in an electronic designated record set and information related to such access, in accordance with 45 C.F.R. § 164.528. Business Associate must document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Should an Individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. § 164.528, Business Associate must promptly provide Covered Entity with information in a format and manner sufficient to respond to the Individual's request.

R. Business Associate must, upon request and with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI that was provided to it by Covered Entity.

S. Business Associate must make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with HIPAA. Business Associate must make the aforementioned information available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate must comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held or controlled by Business Associate.

T. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502(j)(1).

U. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or the Underlying Agreement, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the limited purpose for which it was disclosed to the person, and the person must agree to notify Business Associate of any instance of any Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement of which it is aware in which the confidentiality of the information has been breached.

V. Business Associate understands that, pursuant to 45 CFR § 160.402, the Business Associate is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation of the HIPAA rules based on the act or omission of any agent of the Business Associate, including a workforce member or subcontractor, acting within the scope of the agency.

#### IV. TERM AND TERMINATION.

A. Term. The Term of this Agreement shall be effective as of the effective date of the Underlying Agreement, and shall terminate: (1) when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity; or, (2) if it is infeasible to return or destroy PHI, in accordance with the termination provisions in this Article IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, have the right to terminate this Agreement and to terminate the Underlying Agreement, and shall report the violation to the Secretary;

2. Have the right to immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, and shall report the violation to the Secretary; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.

4. This Article IV, Term and Termination, Paragraph B, is in addition to the provisions set forth in Paragraph 27, Termination for Default of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement, in which "Business Associate" is "Contractor" and "Covered Entity" is "County" for purposes of this Agreement.

C. Effect of Termination.

1. Except as provided in Section IV.C.2, upon termination or cancellation of this Agreement, for any reason, Business Associate must return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of a subcontractor(s), employee(s), or agent(s) of Business Associate. Business Associate must not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate must provide to Covered Entity written notification of the nature of the PHI and the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate must extend the protections of this Agreement to such PHI and limit further use(s) and disclosure(s) of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement survive termination of this Agreement with regard to such PHI.

3. Should Business Associate violate this Agreement, HIPAA, the Underlying Agreement, the MCMRA, or other applicable law, Covered Entity has the right to immediately terminate any contract then in force between the Parties, including the Underlying Agreement.

**V. CONSIDERATION.** Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be reasonably, justifiably, and detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

**VI. CAUSES OF ACTION IN THE EVENT OF BREACH.** As used in this paragraph, the term “breach” has the meaning normally ascribed to that term under the Maryland law related to contracts, as opposed to the specific definition under HIPAA related to PHI. Business Associate hereby recognizes that irreparable harm will result to Covered Entity in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of this Agreement. Furthermore, in the event of breach of this Agreement by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The causes of action contained in this Article VI are in addition to (and do not supersede) any action for damages and/or any other cause of action Covered Entity may have for breach of any part of this Agreement. Furthermore, these provisions are in addition to the provisions set forth in Paragraph 18, “Indemnification”, of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which “Business Associate” is “Contractor” and “Covered Entity” is “County”, for purposes of this Agreement.

**VII. MODIFICATION; AMENDMENT.** This Agreement may be modified or amended only through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of HIPAA, including its Privacy, Security, and Notice Rules.

**VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES.** Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement, along with the Underlying Agreement, shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement, by its title, date, and substance and specifically state that the provisions of the later written agreement shall control over this Agreement and Underlying Agreement. In any event, any agreement between the Parties, including this Agreement and Underlying Agreement, must be in full compliance with HIPAA, and any provision in an agreement that fails to comply with HIPAA will be deemed separable from the document, unenforceable, and of no effect.

**IX. COMPLIANCE WITH STATE LAW.** The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If HIPAA conflicts with another applicable law regarding the degree of protection provided for Protected Health Information, Business Associate must comply with the more restrictive protection requirement.

**X. MISCELLANEOUS.**

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.

B. Regulatory References. A reference in this Agreement to a section in HIPAA means the section in effect, or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Joy Page, Esq.  
Deputy Privacy Official  
Montgomery County, Maryland  
401 Hungerford Drive, 7<sup>th</sup> Floor  
Rockville, Maryland 20850  
(240) 777-3247 (Voice)  
(240) 777- 3099 (Fax)

Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

D. Maryland Law. This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Maryland, without regard to choice of law principles.

E. Incorporation of Future Amendments. Other requirements applicable to Business Associates under HIPAA are incorporated by reference into this Agreement.

F. Penalties for HIPAA Violation. In addition to that stated in this Agreement, Business Associate may be subject to civil and criminal penalties noted under HIPAA, including the same HIPAA civil and criminal penalties applicable to a Covered Entity.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

(INSERT NAME OF BUSINESS ASSOCIATE)

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Cherri Branson

Title: \_\_\_\_\_

Title: Director, Office of Procurement

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**FORM OF NOTIFICATION**

This notification is made pursuant to Section III.F of the Business Associate Agreement between:

- Montgomery County, Maryland, (the “County”) and
- \_\_\_\_\_(Business Associate).

Business Associate hereby notifies the County that there has been a Breach, Security Incident, or use or disclosure of PHI not provided for by the Business Associate Agreement (an “Incident”) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the Incident:

\_\_\_\_\_  
\_\_\_\_\_

Date of the Incident: \_\_\_\_\_

Date of discovery of the Incident: \_\_\_\_\_

Does the Incident involve 500 or more individuals? Yes/No

If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the Incident:

\_\_\_\_\_

Names and addresses of individuals affected by the Incident:

(Attach additional pages as necessary)\_\_\_\_\_

The types of unsecured PHI that were involved in the Incident (such as full name, Social Security number, date of birth, home address, account number, or disability code):

\_\_\_\_\_  
\_\_\_\_\_

Description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against any further Incidents:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - "Minority Contracting", Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement, or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program, Office of Business Relations and Compliance at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Virginia Small, Women & Minority-Owned Business; Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.



Montgomery County MFD Report of Payments Received For Office Use  
Office of Business Relations and Compliance  
**SAMPLE ONLY! NOT TO BE USED BY PRIME**

MFD Subcontractor Company Name: \_\_\_\_\_

Prime Contractor Company Name: \_\_\_\_\_

Contract Number/Title: \_\_\_\_\_

Project Location: \_\_\_\_\_

MFD Subcontract Amount: \$ \_\_\_\_\_

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of \_\_\_\_\_, my company received \$ \_\_\_\_\_ for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ \_\_\_\_\_

TOTAL PAYMENTS RECEIVED TO DATE: \$ \_\_\_\_\_

Are you experiencing any contract problems with the prime contractor and/or the project? YES  NO

Comments: \_\_\_\_\_

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

\_\_\_\_\_  
(TYPED/PRINTED COMPANY NAME)

\_\_\_\_\_  
(TYPED/PRINTED NAME OF COMPANY OFFICIAL)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(SIGNATURE OF COMPANY OFFICIAL)

\_\_\_\_\_  
(DATE)

( ) - ( ) - \_\_\_\_\_  
TELEPHONE FAX E-MAIL

Return by: Email – [MFD@montgomerycountymd.gov](mailto:MFD@montgomerycountymd.gov) or FAX – 240-777-9952  
For assistance, contact the MFD Office at 240-777-9912



Montgomery County MFD Report of Payments Received For Office Use
Office of Business Relations and Compliance
SAMPLE ONLY! NOT TO BE USED BY PRIME

MFD Subcontractor Company Name: \_\_\_\_\_

Prime Contractor Company Name: \_\_\_\_\_

Contract Number/Title: \_\_\_\_\_

Project Location: \_\_\_\_\_

MFD Subcontract Amount: \$ \_\_\_\_\_

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of \_\_\_\_\_, my company received \$ \_\_\_\_\_ for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ \_\_\_\_\_

TOTAL PAYMENTS RECEIVED TO DATE: \$ \_\_\_\_\_

Are you experiencing any contract problems with the prime contractor and/or the project? YES [ ] NO [ ]

Comments: \_\_\_\_\_

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

(TYPED/PRINTED COMPANY NAME)

(TYPED/PRINTED NAME OF COMPANY OFFICIAL)

(TITLE)

(SIGNATURE OF COMPANY OFFICIAL)

(DATE)

( ) - ( ) -
TELEPHONE FAX E-MAIL

Return by: Email - MFD@montgomerycountymd.gov or FAX - 240-777-9952
For assistance, contact the MFD Office at 240-777-9912

OPEN #1057579  
ATTACHMENT D

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage goals listed below of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Business Program Manager. The letter must explain why a waiver is appropriate. The Director of the Office of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

For Goals by each purchasing category, please refer to [www.montgomerycountymd.gov/mfd](http://www.montgomerycountymd.gov/mfd)

- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

OPEN #1057579  
MONTGOMERY COUNTY, MARYLAND  
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR  
PERFORMANCE PLAN

Contractor's  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax  
Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTRACT NUMBER/PROJECT  
DESCRIPTION: \_\_\_\_\_

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax  
Number: \_\_\_\_\_ Email: \_\_\_\_\_

- E. This Plan covers the life of the contract from contract execution through the final contract expiration date.
- F. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is \_\_\_\_\_% of the total dollars awarded to Contractor.
- G. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: \_\_\_\_\_  
Subcontractor  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

- AFRICAN AMERICAN      ASIAN AMERICAN      DISABLED PERSON
- FEMALE                  HISPANIC AMERICAN      NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor :

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

2. Certified by:

Subcontractor Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

- AFRICAN AMERICAN      ASIAN AMERICAN      DISABLED PERSON
- FEMALE                  HISPANIC AMERICAN      NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

3. Certified by:

Subcontractor Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTACT  
PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN  
FEMALE

ASIAN AMERICAN  
HISPANIC AMERICAN

DISABLED PERSON  
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

4. Certified By: \_\_\_\_\_

Subcontractor

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax  
Number: \_\_\_\_\_

Email

:

CONTACT  
PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN  
FEMALE

ASIAN AMERICAN  
HISPANIC AMERICAN

DISABLED PERSON  
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Date

:

Partial Waiver Approved:

Date

:

\_\_\_\_\_  
MFD Program Officer

\_\_\_\_\_  
MFD Program Officer

Full Waiver Approved:

Date

:

Partial Waiver Approved:

Date

:

\_\_\_\_\_  
Director  
Cherri Branson  
Office of Procurement

\_\_\_\_\_  
Director  
Cherri Branson  
Office of Procurement

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. \_\_\_\_\_) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S  
NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

2. TYPE CORPORATE CONTRACTOR'S  
NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

OPEN #1057579

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

---

Signature

---

Typed Name

---

Title

---

Date

APPROVED:

---

Cherri Branson, Director, Office of Procurement

---

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:

The Contractor must notify the Director, Office of Procurement, of any proposed change to the Subcontractor Performance Plan.

**OPEN #1057579**  
**ATTACHMENT E**

Wage Requirements for Services Contract  
Addendum to The General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Wage Requirements Law, found at Section 11B-33A of the Montgomery County Code (“Wage Law” or “WRL” or “11B-33A”). A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the Wage Requirements Law, subject to the exceptions for particular contractors noted in 11B-33A (b) and for particular employees noted in 11B-33A (f).
- B. Conflicting requirements (11B-33A (g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. A nonprofit organization that is exempt from the Wage Law under 11B-33A must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. Section 11B-33A (b)(3) & (c)(2).
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement in 11B-33A.
- E. Each contractor and subcontractor covered under 11B-33A must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the wage requirements. Section 11B-33A (h).
- F. An employer must comply with Section 11B-33A during the initial term of the contract and all subsequent renewal periods, and must pay the adjusted wage rate increase required under 11B-33A (e)(2), if any, which is effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right, or filing a complaint of a violation, under the WRL.
- H. The sanctions under Section 11B-33 (b), which apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements of 11B-33A.
- I. The County may assess liquidated damages for any noncompliance by contractor or its subcontractor with Section 11B-33A based on the rate of 1% per day of the total contract amount, or the estimated annual contract value of a requirements contract, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. If a WRL compliance audit determines that the Contractor has violated requirements of the WRL, including but not limited to the wage requirements, the County may assess the Contractor for the cost incurred by the County in conducting the audit. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action against the violating contractor or subcontractor enforce the payment of wages due under Section 11B-33A and recover from the Contractor or subcontractor any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation by the Contractor or subcontractor arising from the employee asserting any right, or filing a complaint of violation, under 11B-33A.
- J. The Director may conduct random audits to assure compliance with Section 11B-33A. The Director may conduct an on-site inspection(s) for the purpose of determining compliance. Some of the documents that may be required during an audit are listed on the Living Wage FAQ web page: <http://www.montgomerycountymd.gov/PRO/OBRC/LivingWage.html>
- K. The Contractor is in breach of this contract if the Contractor fails to submit timely documentation demonstrating compliance with Section 11B-33A to the satisfaction of the Director, including: the Wage Requirements Law Payroll Report Form (PMMD-183), which is required to be submitted by the end of the month (January, April, July, October) following each quarter; documents requested in conjunction with a random or compliance audit being conducted by the County; or documents otherwise requested by the

OPEN #1057579

Director. In the event of a breach of contract under this paragraph, or for any other violation of the WRL, the County may assess against, or withhold from payment to, Contractor, the liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

- L. For any questions, please contact the Wage Law Program Manager at 240-777-9918 or [WRL@montgomerycountymd.gov](mailto:WRL@montgomerycountymd.gov) .

[Remainder of Page Intentionally Left Blank]

**Wage Requirements Law Certification**

(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Provide, in the spaces below, the contact name and information of the individual designated by your firm to monitor your compliance with the County’s Wage Requirements Law, unless exempt under Section 11B-33A (b) (see Section B. below):

Contact Name		Title	
Phone Number		Fax Number	
E-mail Address			

In the event that you, the “Offeror,” are awarded the contract and become a Contractor, YOU MUST MARK  or  in ALL BOXES BELOW that apply.

A. Wage Requirements Compliance

This Contractor, as a “covered employer”, will comply with the requirements under County Code Section 11B-33A, “Wage Requirements” (“Wage Requirements Law” or WRL”). Contractor and its subcontractors will pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required wage rate effective at the time the work is performed. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A “covered employer” must submit (preferably via email) quarterly (by the end of January, April, July, and October for the quarter ending the preceding month) certified payroll records for each payroll period and for all employees of the contractor or a subcontractor performing services under the County contract governed by the Wage Requirements Law, to the Office of Business Relations and Compliance, Attn: Wage Law Program Manager. These payroll records must include the following: name; position/title; gender/race (for contracts awarded after October 1, 2015); daily straight-time hours worked; daily overtime hours worked; straight-time hourly pay rate; overtime hourly pay rate; both employer and employee share of health insurance premium; and total gross wages paid for each period. A sample of the Payroll Report Form can be found at the below link. (<http://www.montgomerycountymd.gov/PRO/OBRC/LivingWage.html>). In lieu of the Payroll Report Form, payroll registers generally satisfy the requirement. Late submission or non-submission of this information, or any other violation of the WRL, may result in the County withholding contract payments and additional actions by the County, including but not limited to: assessing liquidated damages, terminating the contract, or otherwise taking action to enforce the contract or the Wage Requirements Law. The Contractor must ensure that NO Social Security number of any person, other than the last four digits, is included on the quarterly report.

B. Exemption Status (if applicable)

This Contractor is exempt from Section 11B-33A, “Wage Requirements,” because it is:

1. Reserved – [Intentionally left blank].
2. a contractor who, at the time a contract is signed, has received less than \$50,000 from the County in the most recent 12-month period, and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A (b)(1);
3. a public entity. Section 11B-33A (b)(2).

OPEN #1057579

- 4. a non-profit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A (b)(3) **(must complete item C below)**.
- 5. an employer expressly precluded from complying with the WRL by the terms of any federal or state law, contract, or grant. Section 11B-33A (b)(7) **(must specify the law, or furnish a copy of the contract or grant)**.
- C. Nonprofit Wage & Health Information  
This Contractor is a non-profit organization that is exempt from coverage under Section 11B-33A (b)(3). Accordingly, the contractor has completed the 501 (c)(3) Nonprofit Organization’s Employee’s Wage and Health Insurance Form, which is attached. See Section 11B-33A (c)(2).
- D. Nonprofit’s Comparison Price(s) (if desired)  
This Contractor is a non-profit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blanket-cost quotation sheet on which it is submitting its price(s) in the RFP, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the WRL. For proposal evaluation purposes, this price(s) will be compared to price(s) of another nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the WRL. This revised information on the duplicate cost sheet must be clearly marked as your nonprofit organization comparison price(s). In order for the County to compare your price(s), the revised information on the duplicate cost sheet must be submitted with your offer on or before the offer opening date, must show how the difference between your nonprofit organization price(s) and other organization comparison price(s) was calculated. Section 11B-33A (c)(2).
- E. Wage Requirements Law Reduction (not applicable after July 22, 2015)  
This Contractor is a “covered employer”, and it desires to reduce its hourly rate paid under the WRL by an amount equal to, or less than, the per employee hourly cost of the employer’s share of the health insurance premium. Contractor certifies that the per employee hourly cost of the employer’s share of the premium for that insurance is: \$ \_\_\_\_\_. Section 11B-33A (d) & (e).
- F. Sole Proprietorship  
Sole Proprietorships are subject to the Wage Requirements Law. In order to be excused from the posting and reporting requirements of the WRL, the individual who is the sole proprietor must sign the certifications below in order to attest to the fact that the Sole Proprietorship:
  - (1) is aware of, and will comply with, the Wage Requirements Law;
  - (2) has no employees other than the sole proprietor; and
  - (3) will inform the Montgomery County Office of Business Relations and Compliance if the sole proprietor employs any workers other than the sole proprietor.

**Contractor Certification**

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	



OPEN #1057579  
**ATTACHMENT F - APPLICATION FORM**

Please review and complete the following information for the above-referenced service(s). **If your organization is a group practice or other incorporated entity, please provide the names and professional license number of all medical providers who will be providing services under this Contract along with the type of service(s) each person will be providing. A blank form is attached for this purpose.** You must notify the County if your practice's legal status changes. **In addition, please supply information about your billing contact/service below.**

Please review and complete the following information. By signing this form you are signifying that you have received a copy of this Open Solicitation and understand the requirements of this Open Solicitation.

\_\_\_\_\_  
Name of Firm or Individual

\_\_\_\_\_  
Contact Name/Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Tax Identification Number (TIN)\*

\_\_\_\_\_  
Email Address

\*Note: If Applicant does not have a TIN, the County will request the Applicant's Social Security Number at the time of Contract award in order to make payments for services rendered by the Applicant in accordance with the resulting Contract.

Profit or Non-Profit (please check one) Profit  Non-Profit  [Indicate type of non-profit corporation, i.e., 503c(3)]

Please provide the required licensure information for each person and language proficiency, if applicable. Use additional copies of this page if necessary.

**License(s)/Degree(s)**

**Language Proficiency**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OPEN #1057579

Please list all Providers who will be utilized to provide services under the County's contract with your organization. If more space is needed, please duplicate this form.

<u>Provider Name</u>	<u>Services(s)</u>	<u>License/Certifications</u>
_____	_____	_____
	_____	_____
	_____	_____
_____	_____	_____
	_____	_____
	_____	_____
_____	_____	_____
	_____	_____
	_____	_____

ATTACHMENT G - APPLICATION FORM

REFERENCES

(must submit at least three)

You are requested to provide references to the County with your proposal. The three (3) references must be from individuals or firms currently being serviced or supplied under similar contracts, or for whom work of a similar scope has been performed within the last year. Names for references shall be of individuals who directly supervised or had direct knowledge of the services or goods provided. Failure of an offeror to provide the County with references within the time frame as stated herein may result in the offeror being considered non-responsible.

NAME OF FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
EMAIL: \_\_\_\_\_